

RFB

OGC 73-2216

30 November 1973

Charles R. Esherick, Esq.
Trial Attorney, Antitrust Division
Department of Justice
10th Street and Pennsylvania Avenue
Washington, D.C. 20530

Dear Mr. Esherick:

OGC Has Reviewed Re: U.S. v. International Business Machines Corporation

In response to your request for a re-evaluation of our refusal to permit IBM to examine CIA classified documents pertaining to Electronic Data Processing, the responsible offices within the Agency are reviewing their files to determine if documents or listings can be made available in some form for examination by IBM.

In affidavits dated 27 April 1972 and 18 January 1973, the Director of Central Intelligence declined to permit examination of the files of the Agency by IBM and declined to submit a listing in the form requested of documents withheld on national security grounds.

Wherever possible, documents are being declassified. The contents of a few documents no longer justify classification, but in most cases, declassification can be authorized only if some parts of the documents are deleted. These deletions should

not distort the documents insofar as IBM's needs are concerned. We would request that in the interest of maintaining original records intact, we be permitted to supply Xerox copies of documents from which deletions are made.

In addition to supplying some declassified documents as described in the preceding paragraph, we will also supply listings of documents withheld on the ground of statutory privilege. While these listings cannot be in the precise form described in the supplemental order, they will include sufficient detail to enable IBM to identify those documents they may want to inspect. The listings will include the contract number, a brief description of the item or service contracted for, the period of the contract and a description of the type of document (e.g., source selection or business justification). Because the relationship of this Agency with a contractor is sometimes classified information in itself, the name of the contractor will be coded. If the contractor's name is necessary for IBM to make a decision on its need to inspect the document itself, arrangements will be made to provide the name. When IBM has identified documents from the listings which they wish to inspect, the Agency will attempt declassification as described above.

There almost certainly will remain a few documents so sensitive that we cannot permit inspection and copying in any case. However, we believe the above procedure will be responsive in the case of the vast majority of the documents in our possession. We would urge, however, that initial inspection of the documents and the listings be made by IBM representatives on CIA premises rather than submitting the documents and listings to the court at this time. This will avoid the necessity for further protective orders and requests for in camera inspection and sealing of records. Based on IBM's previous inspection of unclassified CIA documents in this case, we would expect that they would want to copy a fairly small number. If this is so, prior inspection by IBM at CIA will make it much easier to provide the needed documents in a manner that will not jeopardize national security or unduly burden the court. STATINTL

Associate General Counsel

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